

# SENATE, No. 664

## STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

**Sponsored by:**

**Senator BARBARA BUONO**

**District 18 (Middlesex)**

**Senator THOMAS H. KEAN, JR.**

**District 21 (Essex, Morris, Somerset and Union)**

**Co-Sponsored by:**

**Senators Turner and Greenstein**

**SYNOPSIS**

Prohibits sale of products containing dextromethorphan to minors under 18 years of age.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



**(Sponsorship Updated As Of: 1/7/2011)**

1    **AN ACT** concerning the sale of dextromethorphan to minors and  
2       supplementing Title 2A of the New Jersey Statutes.

3

4       **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5       *of New Jersey:*

6

7       1.   a. No person, either directly or indirectly by an agent or  
8       employee, shall sell or offer to sell to a person under 18 years of  
9       age any product containing dextromethorphan.

10       b. The establishment of all of the following shall constitute a  
11       defense to any prosecution brought pursuant to subsection a. of this  
12       section:

13       (1) that the purchaser of the product falsely represented, by  
14       producing either a driver's license or non-driver identification card  
15       issued by the New Jersey Motor Vehicle Commission , a similar  
16       card issued pursuant to the laws of another state or the federal  
17       government or Canada, or a photographic identification card issued  
18       by a county clerk, that the purchaser was of legal age to make the  
19       purchase;

20       (2) that the appearance of the purchaser of the product was such  
21       that an ordinary prudent person would believe the purchaser to be of  
22       legal age to make the purchase; and

23       (3) that the sale of the product was made in good faith, relying  
24       upon the production of the identification set forth in paragraph (1)  
25       of this subsection, the appearance of the purchaser, and in the  
26       reasonable belief that the purchaser was of legal age to make the  
27       purchase.

28       c. A person who violates the provisions of subsection a. of this  
29       section, including an employee of a retail establishment who  
30       actually sells a product containing dextromethorphan to a person  
31       under 18 years of age, shall be liable to a civil penalty of not more  
32       than \$250 for a first violation, not more than \$500 for a second  
33       violation, and not more than \$1,000 for a third and each subsequent  
34       violation. In the case of a retail establishment that is part of a chain  
35       with two or more locations in the State, the violation shall be  
36       assessed against the particular retail establishment and not the  
37       chain. The civil penalty shall be collected pursuant to the "Penalty  
38       Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.),  
39       in a summary proceeding before the municipal court having  
40       jurisdiction. An official authorized by statute or ordinance to  
41       enforce the State or local health codes or a law enforcement officer  
42       having enforcement authority in that municipality may issue a  
43       summons for a violation of the provisions of subsection a. of this  
44       section, and may serve and execute all process with respect to the  
45       enforcement of this section consistent with the Rules of Court. A  
46       penalty recovered under the provisions of this subsection shall be  
47       recovered by and in the name of the State by the local health  
48       agency. The penalty shall be paid into the treasury of the

1 municipality in which the violation occurred for the general uses of  
2 the municipality.

3 d. The provisions of this act shall not apply to any prescription  
4 medication containing dextromethorphan that is dispensed by a  
5 pharmacist pursuant to a valid prescription.

6  
7 2. This act shall take effect on the 90th day after enactment.  
8  
9

#### 10 STATEMENT

11

12 This bill would prohibit the sale of, or offer to sell, any product  
13 containing dextromethorphan to a person under 18 years of age.

14 Specifically, the bill provides as follows:

- 15 • No person, either directly or indirectly by an agent or employee,  
16 shall sell or offer to sell to a person under 18 years of age any  
17 product containing dextromethorphan.
- 18 • The establishment of all of the following shall constitute a  
19 defense to any prosecution brought pursuant to this bill:
  - 20 -- that the purchaser of the product falsely represented, by  
21 producing either a driver's license or non-driver identification  
22 card issued by the New Jersey Motor Vehicle Commission or a  
23 similar card issued pursuant to the laws of another state or the  
24 federal government or Canada, or a photographic identification  
25 issued by a county clerk, that the purchaser was of legal age to  
26 make the purchase;
  - 27 -- that the appearance of the purchaser of the product was such  
28 that an ordinary prudent person would believe the purchaser to be  
29 of legal age to make the purchase; and
  - 30 -- that the sale of the product was made in good faith, relying  
31 upon the production of identification as described in the bill, the  
32 appearance of the purchaser, and in the reasonable belief that the  
33 purchaser was of legal age to make the purchase.
- 34 • A person who violates the provisions of this bill, including an  
35 employee of a retail establishment who actually sells a product  
36 containing dextromethorphan to a person under 18 years of age,  
37 shall be liable to a civil penalty of not more than \$250 for a first  
38 violation, not more than \$500 for a second violation, and not  
39 more than \$1,000 for a third and each subsequent violation. In  
40 the case of a retail establishment that is part of a chain with two  
41 or more locations in the State, the violation shall be assessed  
42 against the particular retail establishment and not the chain. The  
43 civil penalty shall be collected pursuant to the "Penalty  
44 Enforcement Law of 1999," in a summary proceeding before the  
45 municipal court having jurisdiction. An official authorized by  
46 statute or ordinance to enforce the State or local health codes or a  
47 law enforcement officer having enforcement authority in that

- 1      municipality may issue a summons for a violation, and may serve  
2      and execute all process with respect to the enforcement of this bill  
3      consistent with the Rules of Court. A penalty recovered under the  
4      provisions of this bill shall be recovered by and in the name of the  
5      State by the local health agency. The penalty shall be paid into  
6      the treasury of the municipality in which the violation occurred  
7      for the general uses of the municipality.
- 8      • The provisions of this bill shall not apply to any prescription  
9      medication containing dextromethorphan that is dispensed by a  
10     pharmacist pursuant to a valid prescription.
- 11     • The bill takes effect on the 90th day after enactment.
- 12     The purpose of the bill is to address the problem of abuse by  
13     teenagers of various over-the-counter cold remedies which, when  
14     taken in sufficient doses, can produce hallucinogenic effects and  
15     have been reported to cause permanent brain damage, coma, and  
16     even death.